

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Aug 04, 2022**

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SECURITY NATIONAL INSURANCE

COMPANY,

Plaintiff,

v.

CONSTRUCTION ASSOCIATES OF

SPOKANE, INC.; MARK and JENNIFER

WILSON,

Defendants.

No. 2:20-CV-00167-SAB

**ORDER STRIKING  
PLAINTIFF'S MOTION TO  
DISMISS; DENYING MOTION  
TO REVISE**

Before the Court are Plaintiff's Rule 12(c) Motion to Dismiss Counterclaims Brought Under RCW 48.30.015, ECF No. 237; and Plaintiff's Motion to Revise (FRCP 54), ECF No. 251. The motions were considered without oral argument.

**Plaintiff's Motion to Dismiss Counterclaims**

Security National seeks dismissal of one of the Wilsons' counterclaims against it—specifically the Washington Insurance Fair Conduct Act ("IFCA"), RCW 48.30.015, counterclaim. Security National argues that the Court should dismiss the Wilsons' IFCA counterclaim because (1) IFCA does not apply in this case; and (2) even if it does, the Wilsons have failed to identify any "actual damages" proximately caused by the IFCA violation.

The Court strikes Security National's motion as untimely. This matter was transferred to the Court from Judge Salvador Mendoza, Jr. on March 24, 2022.

**ORDER STRIKING PLAINTIFF'S MOTION TO DISMISS; DENYING  
MOTION TO REVISE # 1**

1 ECF No. 235. When this Court took over the case, the Court issued a revised Jury  
2 Trial Scheduling Order, resetting the case deadlines. ECF No. 245. However, in  
3 that revised Jury Trial Scheduling Order, the Court did not reset the parties'  
4 dispositive motion deadline. *Id.* Thus, the parties' last operative dispositive motion  
5 deadline was October 8, 2021, set by Judge Mendoza in his August 12, 2021 Order  
6 Granting Motion to Modify Scheduling Order, ECF No. 133.

7 Security National did not file its Motion to Dismiss until April 8, 2022. ECF  
8 No. 237. Thus, the Court strikes the motion as untimely filed.

### 9 **Plaintiff's Motion to Revise**

10 Security National requests that the Court "revisit and revise" Judge  
11 Mendoza's March 24, 2022 Order Regarding Summary Judgment Motions, ECF  
12 No. 234. Specifically, Security National requests that the Court withdraw Judge  
13 Mendoza's ruling that, in light of the Washington State Supreme Court's decision  
14 in *T-Mobile USA Inc. v. Selective Insurance Company of America*, 450 P.3d 150  
15 (Wash. 2019), Security National acted in bad faith by denying a tender of defense  
16 to Construction Associates.

17 Federal Rule of Civil Procedure 54(b) states that, if a court issues an order  
18 "that adjudicates fewer than all the claims or the rights and liabilities of fewer than  
19 all the parties does not end the action as to any of the claims or parties and may be  
20 revised at any time before the entry of a judgment adjudicating all the claims and  
21 all the parties' rights and liabilities." Thus, the Court has discretion to revisit an  
22 interlocutory order, such as an order granting a motion for partial summary  
23 judgment. *E.g., Langley v. Geico Gen. Ins. Co.*, No. 1:14-CV-3069-SMJ, 2015 WL  
24 3402895, at \*1 n.1 (E.D. Wash. May 26, 2015).

25 However, the Ninth Circuit has stated that reconsideration is an  
26 "extraordinary remedy, to be used sparingly in the interests of finality and  
27 conservation of judicial resources." *Kona Enters., Inc. v. Estate of Bishop*, 229  
28 F.3d 877, 890 (9th Cir. 2000). "A district court may properly reconsider its

**ORDER STRIKING PLAINTIFF'S MOTION TO DISMISS; DENYING  
MOTION TO REVISE # 2**

1 decision if it “(1) is presented with newly discovered evidence, (2) committed clear  
2 error or the initial decision was manifestly unjust, or (3) if there is an intervening  
3 change in controlling law.” *Smith v. Clark Cnty. Sch. Dist.*, 727 F.3d 950, 955 (9th  
4 Cir. 2013) (quoting *Sch. Dist. No. 1J*, 5 F.3d at 1263).

5 The Court denies Security National’s motion. Security National has not  
6 presented newly discovered evidence or an intervening change in the controlling  
7 law. Defendant has also not shown that the Court committed clear error or that the  
8 initial decision was manifestly unjust. Finally, as the Court has made clear, the  
9 Court will not be revisiting any issues in this case previously decided by Judge  
10 Mendoza.

11 Accordingly, **IT IS HEREBY ORDERED:**

12 1. Plaintiff’s Rule 12(c) Motion to Dismiss Counterclaims Brought  
13 Under RCW 48.30.015, ECF No. 237, is **STRICKEN** as untimely.

14 2. Plaintiff’s Motion to Revise (FRCP 54), ECF No. 251, is **DENIED**.  
15 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter  
16 this Order and provide copies to counsel.

17 **DATED** this 4th day of August 2022.



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A handwritten signature in blue ink that reads "Stanley A. Bastian".

23 Stanley A. Bastian  
24 Chief United States District Judge  
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